THE HON'BLE Mr. JUSTICE B. SUDERSHAN REDDY

And

THE HON'BLE Mr. JUSTICE S. ANANDA REDDY

W.P. No.17944 of 2005

DATE: 14-09-2005

Between:

M/s. Jain Bulk Movers

Rep. by its Proprietor Sri Goutam Jain

S/o. S.C. Jain, Occ: Business,

aged 27 years, R/o.S-22, 2nd Floor,

Shivaji Park, Punjabi Bagh,

New Delhi. .. Petitioner

AND

The Assistant Commercial Tax Officer (INT),

Check Post, Madnoor, Nizamabad District

& another .. Respondents

THE HON'BLE Mr. JUSTICE B. SUDERSHAN REDDY

AND

THE HON'BLE Mr. JUSTICE S. ANANDA REDDY

W.P. No.17944 of 2005

ORDER: (Per Hon'ble Mr. Justice B. Sudershan Reddy)

The petitioner herein invokes the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India with a prayer to issue Writ of *Mandamus* declaring the notice, dated 30-12-2004, demanding tax of Rs.22,250/- and penalty of Rs.1,11,250/- issued by the

1st respondent as illegal and arbitrary.

In the affidavit filed in support of the application,
the petitioner specifically pleads that no notice was issued by the respondents before levying the tax and penalty.
The procedure prescribed for levying the tax and penalty has not been followed by the respondents. It is under those circumstances, the petitioner contends that the impugned action of the respondents is contrary to the principles of natural justice.

A detailed counter affidavit has been filed by the respondents herein justifying their action. It is stated that the petitioner, in the course of its business of transport of goods from one State to another State, it is bound to surrender the transit pass at the exist point in the State, which admittedly did not surrender by the petitioner at the exit point in the State of Andhra Pradesh. The said act of the petitioner, according to the respondents, in its failure to surrender the transit pass at the last check post shall be deemed that the goods carried in the goods vehicle have been sold in the State by the person incharge of the vehicle or the driver and it is under those circumstances, the tax and penalty have been levied.

The fact remains that the impugned demand is not preceded by any show

cause notice requiring the petitioner to explain as to why the said amount could not be levied and collected towards tax as well as penalty.

In the circumstances, interest of justice would be met by directing the respondents herein to treat the impugned demand notice as the one of show cause notice requiring the petitioner to explain as to why the said amounts could not be levied and collected towards tax and penalty. The petitioner shall file its explanation within three days from today which shall be received by the respondents for its consideration.

It shall be open to the petitioner to submit such documents along with the explanation if they are necessary for establishing its case, which shall also be received by the respondents for its consideration. It is needless to direct that a speaking order shall be passed by the respondents before demanding any amounts from the petitioner. There shall be an order accordingly.

The Writ Petition is accordingly disposed of without any order as to costs.

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B. SUDERSHAN REDDY, J

Date:14-09-2005.

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S. ANANDA REDDY, J

NOTE:

Furnish C.C. of the order within three days.

(B/O)

PV